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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JOHN DOE,

Plaintiff and Appellant,

v.

REGENTS OF THE UNIVERSITY
OF CALIFORNIA,

Defendant and Respondent.

A158704

(Alameda County
Super. Ct. No. HG18917560)

Plaintiff John Doe appeals the denial of his motion for attorney fees under Code of Civil Procedure section 1021.5 and Government Code section 800, subdivision (a). He contends the court erred in holding that his successful litigation against the Regents of the University of California (the University) had not conferred “a significant benefit . . . on the general public or a large class of persons” as required for an award of attorney fees under Code of Civil Procedure section 1021.5, and that the administrative decision made by the University was not “arbitrary and capricious” as required for an award of fees under Government Code section 800. We find no error and shall affirm the order denying plaintiff’s motion.

Background

In January 2017, plaintiff was a third-year medical student at the University of California, San Diego.¹ While on a clinical rotation in the Pediatric and Adolescent Clinic, plaintiff conducted a physical examination on a 12-year-old girl who had been brought to the clinic by her mother for treatment of a possible eating disorder. As part of the examination, plaintiff visually examined the child's exposed breasts and genitals. Plaintiff did not secure consent for the intimate portion of the examination from mother and he conducted the examination without a chaperone present. Within days of the examination, mother filed a complaint stating that her daughter found the physical exam "uncomfortable and disturbing." Plaintiff was immediately placed on "administrative suspension," which precluded any patient conduct pending the investigation of the incident.

At the same time, in March 2017, UCSD's Office for the Prevention of Discrimination and Harassment began its own investigation to determine whether the incident violated any other the University policies. On July 25, 2017, the office investigator concluded that plaintiff was responsible for "sexual harassment" under the University's Policy on Sexual Violence and Sexual Harassment (SVSH policy).² The investigator found that plaintiff's

¹ The University of California, San Diego, or UCSD, is an operating entity of the Regents of the University of California, the sole legal entity that is the respondent in this appeal.

² The SVSH policy defines "sexual harassment" to include "unwelcome verbal, nonverbal or physical conduct of a sexual nature" when "such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from . . . programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive." The SVSH policy applies to incidents "between any members of the University

unchaperoned, intimate examination of a minor female patient's breasts and genitals, without her informed consent, could reasonably "be perceived as sexual in nature" by a minor in the patient's position. The UCSD Director of Student Conduct subsequently determined that the investigator's findings supported a violation of the SVSH policy and, as a result, plaintiff was dismissed from the University.

After exhausting the University's appeal options, plaintiff filed a petition for a writ of administrative mandate, pursuant to Code of Civil Procedure section 1094.5. His petition alleged that he was denied a fair administrative hearing because the University failed to provide adequate notice of the charges against him and access to relevant evidence, and because the investigator and decision makers were not impartial. He also alleged that the University's factual determinations were not supported by substantial evidence.

The trial court granted the petition. The court agreed that there is "no question that there was wrongdoing" because "[h]e should have had a chaperone there." The court found, however, that there was no substantial evidence to support the University's finding that the examination was of a "sexual nature." The court explained that part of plaintiff's responsibility in this instance was to look at the child's genitals and that there was no evidence that his "looking was of a sexual nature as opposed to a professional manner." The court did not find that the University's Title IX misconduct process fails to afford students due process. To the contrary, the court explained, "I'm making a ruling here . . . that there's no substantial evidence . . . in the entire record that this was of a sexual nature. [¶] And because the

community . . . and non-student or non-employee participants in University programs," including "patients."

charge was that this was sexual harassment, and it's not of a sexual nature, it's being referred back to undo that determination. [¶] The University has its rules. It may proceed. I'm not telling them that they can't have another hearing."

After prevailing on his petition, plaintiff filed a motion for an award of attorney fees. He requested an award of the full amount of his fees of \$108,164.67 pursuant to Code of Civil Procedure section 1021.5, or alternatively, for the maximum amount of fees authorized pursuant to Government Code section 800 (i.e., \$7,500). The court denied the motion on the grounds that the litigation did not "confer a significant benefit on the general public or a large class of persons" as required by Code of Civil Procedure section 1021.5 and that the University's sexual harassment determination was not an "arbitrary and capricious" action by a public agency as required by Government Code section 800.

Plaintiff timely filed a notice of appeal.

Discussion

1. Code of Civil Procedure section 1021.5

To obtain an order for attorney fees under Code of Civil Procedure section 1021.5, the movant must establish that (1) it is "a successful party" in an "action," (2) the action "has resulted in the enforcement of an important right affecting the public interest," (3) the action has "conferred" "a significant benefit" "on the general public or a large class of persons," and (4) an award of attorney fees is "appropriate" in light of "the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity." "Derived from the judicially crafted 'private attorney general doctrine' [citation], section 1021.5 is aimed at encouraging litigants to pursue meritorious public interest litigation

vindicating important rights and benefitting a broad swath of citizens, and it achieves this aim by compensating successful litigants with an award of attorney's fees." (*La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1155-1156 (*La Mirada*).)

Here, the court denied plaintiff's motion on the ground that his litigation had not conferred a significant benefit on the general public or a large class of persons. We review the trial court's determination "with a mixed standard of review: To the extent we construe and define the statutory requirements for an award of attorney's fees, our review is de novo; to the extent we assess whether those requirements were properly applied, our review is for an abuse of discretion." (*La Mirada, supra*, 22 Cal.App.5th at p. 1156.)

"Whether a successful party's lawsuit confers a 'significant benefit' on the general public or a large class of persons is a function of (1) 'the significance of the benefit,' and (2) 'the size of the class receiving [the] benefit.' [Citation.] In evaluating these factors, courts are to 'realistic[ally] assess[]' the lawsuit's 'gains' 'in light of all the pertinent circumstances.'" (*La Mirada, supra*, 22 Cal.App.5th at p. 1158.) Where the prevailing party, like plaintiff in this case, asserts that "the nonpecuniary benefit to the public is the proper enforcement of the law, the successful party must show that the law being enforced furthers a significant policy." (*Ibid.*, citing *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 939-940 ["the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation"].)

In this instance, the court granted plaintiff relief on the ground that a specific factual finding lacked evidentiary support. Although the court noted that the investigator was "overzealous" in his prosecution of the complaint,

the court did not rule in plaintiff's favor on any of his due process arguments. Thus, any benefit secured by the litigation inured only to plaintiff. (See *Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1045 [trial court abused its discretion by awarding attorney fees under Code of Civ. Proc., § 1021.5 because the litigation was “simply a substantial evidence matter involving [plaintiff's] personal interests”]; *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 167 [primary effect of lawsuit was to invalidate a permit condition not supported by substantial evidence; attorney fees properly denied where the action vindicated only the rights of the owners of a single parcel of property and did not represent “a ringing declaration of the rights of all or most landowners in the coastal zone”].)

Contrary to plaintiff's argument, the litigation has not secured “the right to due process and fair hearings in Title IX proceedings.” Plaintiff's action did not “cause[] the University to be aware of the unfair practices occurring in the Title IX adjudications, not only at UCSD and the UCSD School of Medicine but within the entire University of California context.” While plaintiff may have wished to “chang[e] the culture of Title IX disciplinary proceedings” by filing this action, we cannot say, based on the court's narrow ruling, that he met that goal.

For this reason, plaintiff's reliance on *Doe v. Westmont College* (2019) 34 Cal.App.5th 622, 640 is misplaced. In that case, which did not involve an award of attorney fees, the court found that the college had violated its own policies and deprived plaintiff of a fair hearing by improperly crediting nontestifying witnesses, failing to provide plaintiff with information regarding its investigation, and failing to allow plaintiff to even indirectly question the witnesses. (*Id.* at pp. 626-627, 634-636.) The court noted that “compelling colleges to adhere to basic principles of fair hearings—and their

own written policies—will lead to an increasing number of decisions upheld by the courts—particularly when the required procedures are not ‘excessively burdensome’ ” which “benefits students accused of sexual misconduct, victims, and colleges alike.” (*Id.* at p. 640.) As explained above, the court here made no findings regarding the fairness of the University’s procedures.

Finally, the court did not hold, as plaintiff seems to suggest, that a medical student could never be found to have violated the SVSH policy “as a result of performing medically necessitated and justified procedures.” The court merely found that there was no evidence that the physical examination performed by plaintiff in this instance was of a sexual nature.

In short, “the grant of administrative mandamus under the limited factual circumstances shown here did not result in conferring a ‘significant benefit’ on a ‘large class of persons.’ ” (*Pacific Legal Foundation v. California Coastal Commission, supra*, 33 Cal.3d at p. 167.) The court did not abuse its discretion in denying plaintiff’s motion for attorney fees under Code of Civil Procedure section 1021.5.

2. Government Code section 800

In the alternative, plaintiff requested attorney fees under Government Code section 800, subdivision (a), which authorizes a maximum of \$7,500 in fees upon a showing that the University’s “finding” or “determination” in the Title IX proceedings “was the result of arbitrary or capricious action or conduct.”³ An award under Government Code section 800 is warranted “ ‘only

³ Government Code section 800, subdivision (a) provides: “In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under this code or under any other provision of state law, except actions resulting from actions of the Department of General Services, if it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the

if the actions of a public entity or official were wholly arbitrary or capricious. The phrase “arbitrary or capricious” encompasses conduct not supported by a fair or substantial reason [citation], a stubborn insistence on following unauthorized conduct [citation], or a bad faith legal dispute [citation]. The determination of whether an action is arbitrary or capricious is essentially one of fact, within the sound discretion of the trial court.’” (*Halaco Engineering Co. v. South Central Coast Regional Com.* (1986) 42 Cal.3d 52, 79; see also *Reis v. Biggs Unified School Dist.* (2005) 126 Cal.App.4th 809, 823 [“ ‘ “Attorney’s fees may not be awarded [under Government Code section 800] simply because the administrative entity or official’s action was erroneous, even if it was ‘clearly erroneous.’ ” ’ ”].)

Here, the trial court observed that the determination in this instance was “the result of a little bit of overzealous enforcement by the person who took the complaint” but that “ ‘overzealousness’ does not mean arbitrary and it does not mean capricious.” The court recognized that there could be “instances where overzealous activity could fall into the arbitrary and capricious category” but that the present case did not reach that level.

Contrary to plaintiff’s argument, the absence of substantial evidence does not necessarily equate to conduct not supported by a fair or substantial reason. (*Byrnes v. Riles* (1984) 157 Cal.App.3d 1170, 1182 [“The trial court’s ruling that certain findings and determinations were not supported by the record does not, in itself, constitute evidence of arbitrary and capricious conduct by the hearing officer.”].) As noted by the University, its investigator

complainant if he or she prevails in the civil action may collect from the public entity reasonable attorney’s fees, computed at one hundred dollars (\$100) per hour, but not to exceed seven thousand five hundred dollars (\$7,500), if he or she is personally obligated to pay the fees in addition to any other relief granted or other costs awarded.”

and decision makers evaluated the facts surrounding the incident from the perspective of the child and concluded that a 12-year-old girl might, under these circumstances, conclude that the examination was sexual in nature. While the trial court rejected that finding, we cannot say that the court abused its discretion in concluding that the University's determination was not unsupported by a fair or substantial reason. Accordingly, the court did not err in denying plaintiff's motion for attorney's fees under Government Code section 800.

Disposition

The order denying plaintiff's motion for attorney fees is affirmed.

POLLAK, P. J.

WE CONCUR:

TUCHER, J.

BROWN, J.